IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 71 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VT JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR MANOJ N POPAT for Petitioner.

B.Y. Mankad, AGP for Respondents No. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/03/2002

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India has challenged the legality and validity of the order dated 4-1-1988 transferring the petitioner from Kadi in Mehsana District to Gariadhar in Bhavnagar district, being illegal, ultra vires, unconstitutional and violative of the fundamental rights of the petitioner guaranteed under the Constitution of India.

2. The petitioner has also prayed for the interim

relief restraining the respondents from executing, implementing or effecting the impugned order of transfer dated 4-1-1988.

3. The brief facts, as are emerged from the petition, are that the petitioner was appointed on 30.7.1956 as an Agricultural Assistant in the erstwhile Kutch State 'C'. The petitioner was promoted as an Additional Taluka Development Officer on 1-2-1985 and he was posted at Palanpur. Thereafter, by an order dated 18.9.1986 the petitioner was transferred to Kadi and since then he was working as a Taluka Development Officer at Kadi. The petitioner was thereafter on 4.1.1988 transferred from Kadi-Mehsana district to Gariadhar in Bhavnagar district and the said order of transfer was challenged by the petitioner in this petition. While challenging the said order, the petitioner has relied on the Government Resolution dated 23rd June 1978 wherein certain guidelines, norms, and principles having been laid down by the State Government in respect of transfer of Government employees. The petitioner has also relied on the Circular dated 7th May 1981 issued by the Panchayat, Housing, Development and Urban Development Department, Sachivalaya, Gandhinagar, whereby the guidelines, principles and norms issued by the General Administration Department, vide Government Resolution dated 23rd June 1978 were made applicable to Panchayat employees also. It is provided in the said guidelines that while making transfer of an employee certain factors are required to be taken into consideration. It is further provided that no transfer should be made unless a period of 3 years is over. It is also provided that such transfer should not be made in the middle of the term so as to disturb the education of the children of the employee and other factors should also be taken into consideration while making such transfers.

4. The petitioner has further submitted that he was posted at Palanpur only in February 1985 and within a period of less than 1 1/2 years, he was transferred to Kadi. So far as his transfer to Kadi was concerned, he resumed his duty in August 1986 and thereafter he was sent for training and after the training he resumed his duty only on 30-9-87. Thereafter, within a short time the petitioner was transferred to Gariadhar in Bhavnagar district and hence the said order of transfer was violative of the principles, guidelines and norms issued by the Government.

5. The petitioner has further referred to and relied on the Circular issued by the State Government on 26th

August 1987 wherein it is stated that in view of the continuing need for effecting economies in Government expenditure, particularly on account of the situation created by the third successive drought in the State, the Government has decided to take certain measures in that regard. The petitioner has also quoted Clause 4 of the said Circular which relates to transfer of employees which says that transfer of employees involving change of headquarters may be stopped till 30-5-1988 except in case when the transfer is necessitated on account of promotion, retirement, death, maintenance of law and order and drought relief works and transfer by request of employees where no financial burden is involved. On the basis of this circular, the petitioner has submitted that neither of the exceptional circumstances was present in his case and hence the said transfer could not be effected and on this ground also the impugned order was required to be quashed and set aside.

6. The petitioner has also challenged the said transfer order on the ground of it being arbitrary, capricious, malicious, motivated and has been made only with an evil eye and was by way of penalty and punishment. The petitioner further submitted that one Karshanji Maganji Thakor, who was a Sitting M.L.A. of Kadi at the relevant point of time, along with his associates has made several illegal demands which were not acceded to by the petitioner and because of that by using political influence and with a view to teach the petitioner a lesson, said Shri Karshanji Thakor has got the order of transfer passed by the respondent No.2.

7. The petitioner has further challenged the said order on the ground of it being malafide, motivated and penal in nature. The petitioner has further submitted that by the said order the petitioner was transferred from Kadi to Gariadhar while no other person has been posted at Kadi, vice the petitioner. The petitioner has also submitted that looking to his family circumstances the transfer order was required to be quashed and set aside.

8. On the basis of the averments and submissions made in the petition, and after hearing the ld. advocate the notice was issued by this Court on 8-1-1988 and ad-interim relief was granted restraining the respondents from transferring the petitioner from the present post.

9. After service of notice on the petitioner, an appearance was filed on behalf of the respondents. An affidavit-in-reply was filed on or around 5-4-1998

wherein it was stated that the order of transfer was passed in the proper authority and the transfer of the petitioner was made in the interest of public service. It is further submitted that the Circular dated 23rd June 1978 only laid down the broad guidelines and it did not confer any rights on the petitioner. It was further submitted in the affidavit-in-reply that Gariadhar was one of the drought affected areas and the petitioner was transferred to Gariadhar with an object to see that the drought relief work was not adversely affected and therefore the petitioner's transfer cannot be said to be in violation of the Circular issued by the State Government on 26th August 1987. It was further submitted in the affidavit-in-reply that the petitioner has levelled personal allegations against the sitting MLA of Kadi without joining him as party and therefore the petition was required to be dismissed in limine. It was further submitted in the affidavit-in-reply that transfer was a condition of service and more particularly the cadre in which the petitioner was working and hence he was supposed to serve the Government at any place at which he was posted and the respondents have therefore prayed that the petition be dismissed and interim relief granted be vacated forthwith so as to enable the State Government to smoothly run the scarcity relief work at Gariadhar and other places.

10. After considering the arguments and contentions raised by the petitioner in the petition as well as after considering the affidavit-in-reply, this Court (Coram: A.P. Ravani, J.) passed an order on April 8, 1998 vacating the ad-interim relief by giving following reasons:

"(a) The order of transfer does not seem to have been passed either by way of penalty or as a result of mala fides. The allegations of mala fides made against one Shri Karsanji Thakore, Member of the Legislative Assembly, representing Kadi constituency, have been denied in the affidavit-in-reply filed by one Smt. U.V. Patel, Assistant Development Commissioner. Moreover said Shri Karsanji Thakore is not joined as a party. Therefore the allegations of mala fides cannot be taken into consideration.

(b) Reliance placed upon the Government Circular annexure-C cannot help the petitioner. The guidelines contained therein are merely directory and not mandatory. The grounds of hardships sought to be raised are not such which are

peculiar to the petitioner. In all cases of transfer some hardship is bound to be caused to the employee concerned. Moreover, the academic term has almost come to an end. Therefore the ground of hardship based on circumstance that the transfer order was passed during the middle of the academic term does not survive at present."

The Court has further observed in the said order that when the ad-interim relief was granted, there was no affidavit-in-reply and it was granted ex-parte. It was further observed that having regard to the averments made in the affidavit-in-reply, the ad-interim relief was not required to be continued. The Court has also not accepted the submission of the learned counsel for the petitioner that the vacating of the ad-interim relief would make the petition infructuous. On the request having been made by the petitioner's advocate, the Court had continued the ad-interim relief upto April 15, 1988 so as to enable the petitioner to challenge the legality and validity of the said order passed by this Court. However, there is nothing on record to show that the order passed by this Court on April 8, 1998 vacating the ad-interim relief was challenged by the petitioner. The learned AGP, Mr. Mankad is also not in a position to make any statement as to whether any appeal was filed against the said order dated April 8, 1998. No one was present on behalf of the petitioner and in this view of the matter, this Court is left with no other alternative, but to believe that the said order dated April 8, 1998, vacating the ad-interim relief, has become final.

11. Even otherwise, while looking at the pleadings made in the petition, it becomes clear that the petitioner was appointed on 30-7-1956 as an Agricultural Assistant. A period of 46 years has gone and even if one assumes that at the age of 18 years the petitioner had joined the service, the petitioner's age by now is more than 60 years and hence he must have retired by now from the service of the respondent authorities. Even after vacation of the interim relief by this Court on 8th April 1998, the petitioner must have joined at Gariadhar and even thereafter certain transfers must have been effected. Considering these two aspects of the matter, the petition has become infructuous and no grievance would survive now.

12. It is also a settled position in law that the Court is always very slow in interfering with the order of transfer if it is passed for administrative exigencies. It is specifically averred in the

affidavit-in-reply that the petitioner's transfer was made in the public interest and it was with an object that the work of scarcity relief was not adversely affected. The petitioner was posted at Gariadhar so as to enable the Government for smooth functioning of the scarcity relief work. There was no denial by the petitioner and no affidavit-in-rejoinder was filed.

13. Taking overall view of the matter, and after hearing the learned Assistant Government Pleader, Mr. Mankad, I am of the view that no interference is called for by this Court at this belated stage in the order of transfer passed on 4-1-1988. Since I find no substance in the petition, the same deserves to be dismissed. Rule is discharged with no order as to costs. Since neither the petitioner nor any one on behalf of the petitioner was present, I grant liberty to the petitioner to revive this petition if any thing contrary to what is stated hereinabove is found by the petitioner.

rmr. [K.A. Puj, J.]